***United States Court of Appeals***

***for the Second Circuit***

# SUPPLEMENTAL APPENDIX

agreed upon by counsel and for such other, different and further

# 75-7053-7084

## United States Court of Appeals

FOR THE SECOND CIRCUIT

WILLIAM GARAFOLA,

*Plaintiff-Appellee,*

—against—

F. A. DETJEN, "SAAR",

*Defendant & Third Party Plaintiff-Appellee-Cross-Appellant,*

—against—

PITTSTON STEVEDORING CORP.,

*Third Party Defendant-Appellant.*

**SUPPLEMENTAL APPENDIX**
**(ON APPEAL FROM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK GRANTING PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST)**

KIRLIN, CAMPBELL & KEATING
*Attorneys for Defendant & Third Party Plaintiff-Appellee-Cross-Appellant*
120 Broadway
New York, New York 10005



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P/S

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No.'s 75-7053
75-7084

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WILLIAM GARAFOLA,

Plaintiff-Appellee,

-against-

F. A. DETJEN, "SAAR",

Defendant & Third Party
Plaintiff-Appellee-Cross-Appellant,

-against-

PITTSTON STEVEDORING CORP.,

Third Party Defendant-Appellant.

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RELEVANT DOCKET ENTRIES.

| | |
|---|---|
| Dec. 10, 1973 | Filed Clerk's "Judgment", Dated December 7, 1973. |
| Mar. 12, 1974 | Filed Copy of Order Dated Mar. 12, 1974 Dismissing Appeal from Clerk's "Judgment". |
| Dec. 13, 1974 | Filed Final Judgment. |
| Feb. 28, 1975 | Filed Plaintiff's Motion to Amend Judgment to Allow Pre-Judgment Interest. |
| Apr. 3, 1975 | Filed Memorandum and Order Denying Motion to Amend Judgment Without Prejudice Because of Pending Appeal. |
| May 6, 1975 | Copy Order of Remand to District Court to Permit Plaintiff to Move to Amend Judgment (Filed June 26, 1975). |
| May 9, 1975 | Filed Plaintiff's Notice of Motion for Order Amending Judgment Dated Dec. 13, 1974 (Entered on Dec. 14, 1974) to Allow Pre-Judgment Interest. |
| June 3, 1975 | Filed Affidavit in Opposition to Above Motion. |
| June 16, 1975 | Filed Memorandum Decision and Order Granting Plaintiff's Motion to Amend Judgment by Allowing Pre-Judgment Interest. |
| June 25, 1975 | Filed Notice of Appeal of Defendant and Third Party Plaintiff from Order Granting Plaintiff's Motion to Amend Judgment by Allowing Pre-Judgment Interest. |
| July 7, 1975 | Filed Notice of Appeal of Third Party Defendant from Order Granting Plaintiff's Motion to Amend Judgment by Allowing Pre-Judgment Interest. |

CLERK'S "JUDGMENT".

UNITED STATES DISTRICT COURT

For The

EASTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 71 C 658

WILLIAM GARAFOLA

vs.

F. A. DETJEN

vs.

PITTSTON STEVEDORING CORP.

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Walter Bruchhausen, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that judgment be entered in favor of the plaintiff in the sum of $235,000 together with costs.

Third party plaintiff entitled to judgment over against third party defendant, together with costs and reasonable counsel fees.

Dated at Brooklyn, New York, this 7th day of December, 1973.

LEWIS ORGEL

Clerk of Court

By F. N. Pellegrino

ORDER DISMISSING APPEAL FROM CLERK'S "JUDGMENT".

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twelfth day of March , one thousand nine hundred and seventy-four.

---

William Garafola,

Plaintiff,

v.

F. A. Detjen,

Defendant and Third Party Plaintiff

v.

Pittston Stevedoring Corporation,

Third Party Defendant

---

It is hereby ordered that the motion made herein by counsel for the

Third Party Plaintiff - F. A. Detjen

~~appellant~~ appellee ~~petitioner~~ ~~respondent~~

by notice of motion dated February 25, 1974 to dismiss the appeal of Pittston Stevedoring Corporation from the United States District Court for the Eastern District of New York for lack of jurisdiction

be and it hereby is granted ~~denied~~

~~It is further ordered that~~

A. DANIEL FUSARO
Clerk

By Edward J. Guardaro
Senior Deputy Clerk

BEFORE: HON. PAUL R. HAYS

HON. WALTER R. MANSFIELD
Circuit Judges

HON. OSCAR E. DAVIS
Court of Claims
~~Circuit~~ Judge

FINAL JUDGMENT.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

71 Civil 658

---

WILLIAM GARAFOLA,

*Plaintiff,*

—against—

F. A. DETJEN, "SAAR",

*Defendant & Third Party Plaintiff,*

—against—

PITTSTON STEVEDORING CORP.,

*Third Party Defendant.*

---

FINAL JUDGMENT

This action having come on for trial before Honorable Walter J. Bruchhausen and a jury, and the jury having rendered a verdict in favor of the plaintiff and against the Defendant and Third Party Plaintiff for the sum of $235,000, and for the recovery for full indemnity by the Defendant and Third Party Plaintiff against the Third Party Defendant,

AND, a purported "judgment" dated December 7, 1973, having been entered on December 10, 1973 without any direction by the Court for the entry of the same pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, notwithstanding that this action has not yet been finally

determined by the fixing of the amount of the "costs and reasonable counsel fees" referred to in the said purported judgment,

And the United States Court of Appeals for the Second Circuit having by order dated March 12, 1974 dismissed the appeal of the Third Party Defendant from the said purported judgment for lack of jurisdiction, on the ground that it is not of Civil Procedure, nor a final judgment within the meaning of 28 U.S.C. Sec. 1291, and the protective cross appeal therefrom being hereby withdrawn for the same reason,

And the amount of attorneys' fees and disbursements of the Defendant and Third Party Plaintiff recovered by it against the Third Party Defendant having been stipulated in the sum of $5,615.63,

Now, upon the said jury verdict and the annexed stipulation fixing the amount of attorneys' fees and disbursements, it is

Ordered and Adjudged as follows:

1. The purported final judgment dated December 7, 1973 and entered on December 10, 1973 be and is hereby superseded and vacated.
2. The plaintiff, William Garafola shall recover of and from Defendant and Third Party Plaintiff, F.. A. Detjen, "SAAR" the sum of $235,000 together with costs heretofore taxed in the sum of $244.36, amounting in all to the sum of $235,244.36.
3. Defendant and Third Party Plaintiff, F.A. Detjen, "SAAR" shall recover of and from the Third Party

Defendant Pittston Stevedoring Corporation the said sum of $235,244.36, together with the sum of $5,615.63, attorneys' fees and disbursements as stipulated, amounting to the total sum of $240,859.99, with taxable costs.

4. The supersedeas bond of Liberty Mutual Insurance Company dated January 15, 1974 heretofore filed by Pittston shall remain in full force and effect and shall be applicable to this final judgment and shall secure both the plaintiff's recovery of the Defendant and Third Party Plaintiff against the Third Party Defendant up to the amount therein stated, in the event of any timely appeal from this final judgment by the Third Party Defendant and any cross appeal by the Defendant and Third Party Plaintiff.

Dated: Brooklyn, New York
December 13, 1974

WALTER BRUCHHAUSEN
*U.S.D.J.*

ORDER OF REMAND TO DISTRICT COURT TO PERMIT PLAINTIFF TO MOVE.
UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the sixth day of May, one thousand nine hundred and seventy-five

---

William Garafola,
Plaintiff-Appellee,
v.
F.A. Bottjen, "Saar",
Defendant & Third Party
Plaintiff-Cross-Appellant,
v.
Victston Stevedoring Corp.,
Third Party Defendant,
Appellants.

It is hereby ordered that the motion made herein by counsel for the

~~appellant~~ appellee ~~petitioner~~ ~~respondent~~

by notice of motion dated April 17, 1975 to remand the action to the United States District Court for the Eastern District of New York for the purposes of moving to amend the judgment

be and it hereby is granted ~~denied~~,

It is further ordered that said action shall be consolidated with this appeal scheduled to be heard in this court.

DANIEL FUSARO,
Clerk

by: Edward J. Guardaro
Senior Deputy Clerk

BEFORE: ~~HON. [illegible]~~

~~HON. WILLIAM H. [illegible]~~

~~HON. [illegible]~~
Circuit Judges

PLAINTIFF'S NOTICE OF MOTION, DATED
MAY 7, 1975 TO AMEND JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | |
|---|---|
| WILLIAM GARAFOLA,<br>Plaintiff,<br>-against-<br>F. A. DETJEN, "SAAR",<br>Defendant and<br>Third-Party Plaintiff,<br>-against-<br>PITTSTON STEVEDORING CORP.,<br>Third-Party Defendant. | 71 C 658<br><br>NOTICE OF MOTION |

S I R S :

PLEASE TAKE NOTICE that upon the oral decision of the United States District Court, For The Second Circuit, Judge Feinberg presiding, directing that this matter be returned to the District Court for the purpose of this motion and upon all the previous pleadings and proceedings and the original motion dated February 21, 1975 returnable March 7, 1975, the affidavit of Irving B. Bushlow heretofore had, the undersigned will move this Court in Courtroom #3 at the Courthouse, 225 Cadman Plaza East, Brooklyn, City and State of New York, on the 22nd day of May, 1975, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order pursuant to Rule 60 (a) and 60 (b) and 61 of the Federal Rules of Civil Procedure for an order amending the judgment dated December 13, 1974, Paragraph 2, to include a direction that plaintiff is entitled to interest from December 10, 1973 as agreed upon by counsel and for such other, different and further relief as to this Court may seem just and proper.

Dated: Brooklyn, New York
May 7, 1975

Yours, etc.,

Irving B. Bushlow
Attorney for Plaintiff
26 Court Street
Brooklyn, New York 11242

To: Kirlin, Campbell & Keating, Esqs.
Attorneys for Defendant & Third-Party Plaintiff
120 Broadway
New York, New York 10005

Alexander, Ash, Schwartz & Cohen, Esqs.
801 Second Avenue
New York, New York
of Counsel to,

Kirk & O'Connell, Esqs.
Attorneys for Third-Party Defendant
111 Livingston Street
Brooklyn, New York 11201

of record showing that there was a meeting of the minds and a

PLAINTIFF'S PREVIOUS NOTICE OF
MOTION DATED FEB. 21, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

WILLIAM GARAFOLA,
Plaintiff,

-against-

F. A. DETJEN, "SAAR",
Defendant and
Third-Party Plaintiff,

-against-

PITTSTON STEVEDORING CORP.,
Third-Party Defendant.

----------X

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Irving Bushlow, Esq., duly sworn to on the 21st day of February, 1975 and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court in Courtroom #3 at the Courthouse, 225 Cadman Plaza East, Brooklyn, City and State of New York, on the 7th day of March, 1975 at 10:00 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order pursuant to Rule 60(a) and 60(b) and 61 of the Federal Rules of Civil Procedure for an order amending the judgment dated December 13, 1974, paragraph 2, to include a direction that plaintiff is entitled to interest from December 10, 1973 as

agreed upon by counsel and for such other, different and further relief as to this court may seem just and proper.

Dated: Brooklyn, New York
February 21, 1975

Yours, etc.,

Irving B. Bushlow
Attorney for Plaintiff
26 Court Street
Brooklyn, New York 11242

To: Kirlin, Campbell & Keating, Esqs.
Attorneys for Defendant and Third-Party Plaintiff
120 Broadway
New York, New York 10005

Alexander, Ash, Schwartz & Cohen, Esqs. of Counsel to,
801 Second Avenue
New York, New York

Kirk & O'Connell, Esqs.
111 Livingston Street
Brooklyn, New York 11201

AFFIDAVIT IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | |
|---|---|
| WILLIAM GARAFOLA,<br><br>Plaintiff,<br><br>-against-<br><br>F. A. DETJEN,<br>"SAAR"<br><br>Defendant and<br>Third-Party Plaintiff,<br><br>-against-<br><br>PITTSTON STEVEDORING CORP.,<br><br>Third-Party Defendant. | AFFIDAVIT INCLUDING MEMORANDUM OF LAW |

STATE OF NEW YORK)
) ss:
COUNTY OF KINGS )

Irving B. Bushlow, being duly sworn deposes and says that he is an attorney-at-law licensed to practice law in the State of New York and before this Court and he makes this affidavit in support of a motion to amend the judgment, dated December 13, 1974 to allow plaintiff interest from December 10, 1973.

This is an action by a longshoreman against a shipowner who in turn impleaded the stevedore-employer. A trial of the action was held before the Hon. Walter Bruchhausen and a jury on December 4, 5, 6 and 7, 1973, resulting in a verdict for

the plaintiff in the amount of $235,000.00 with judgment over against the stevedore. After the jury verdict was rendered, counsel for the shipowner, Henry J. O'Brien, requested time to work out an arrangement on counsel fees. The following colloquy is in the record:

> "Mr. O'Brien: 'Can I work out an arrangement with Mr. Stanziale as to counsel fees? If we cannot stipulate we will have a hearing.'
>
> The Court: 'Oh, that's all right.'
>
> Mr. O'Brien: 'There is no rush. We have a lot of things between now and Christmas.'
>
> The Court: 'Oh, no rush.'
>
> Mr. Stanziale: 'May I have a 30-day stay of execution to protect my rights to appeal?'
>
> Mr. Bushlow: 'No objection. Will judgment be entered Monday?'
>
> The Clerk: 'Immediately.'
>
> Mr. Bushlow: 'Interest runs.'
>
> The Court: 'I think there is an automatic 10-day stay.'
>
> Mr. Bushlow: 'Yes.'
>
> The Court: 'Any objections?'
>
> Mr. O'Brien: 'No, your Honor.'
>
> Mr. Stanziale: "No, your Honor.
>
> The Court: 'Good day, gentlemen."

The clerk entered judgment on December 7, 1973 and the stevedore filed a notice of appeal on or about January 4, 1974. During the time, no agreement was reached on attorney's

On January 3, 1974, the attorneys for the third party

fees and the stevedore intended to perfect his appeal. As a result, the attorney for the shipowner, Henry J. O'Brien, moved in the Court of Appeals to dismiss the appeal on the ground that it was premature and the Court of Appeals granted that motion on March 12, 1974 because attorney's fees were not made part of the judgment.

At this point, the firm of Alexander, Ash, Schwartz & Cohen were retained on the appeal for the stevedore and Joseph A. Cohen, Esq. of that firm was handling the matter. The shipowner continued to fail in his efforts to reach agreement on attorney's fees with Mr. Cohen and eventually had to seek agreement with Mr. Stanziale's firm.

During the period from late January, 1974 on deponent was constantly calling Mr. O'Brien, urging him to reach agreement on counsel fees. Following the action of the Court of Appeals in dismissing the appeal, deponent renewed his efforts to have the parties reach agreement. Finally, at deponent's urging a conference was arranged before your Honor at which time counsel produced a letter agreeing on the amount of counsel fees and the shipowner produced a judgment incorporating the jury's findings and counsel fees and expenses in it, which judgment was signed.

The stevedore filed a new notice of appeal on January 10, 1975 and in discussions since then with Mr. Cohen in which settlement has been discussed, Mr. Cohen raised the point

that plaintiff would only be entitled to interest from December 13, 1974 and not from the date of the original judgment which was entered on December 10, 1973.

It was deponent's view that counsel had agreed at the close of trial that interest would commence to run on the judgment entered at that time, while counsel fees were agreed upon. Plaintiff should not be deprived of over $15,000.00 in interest for the period when the attorneys for the shipowner and stevedore delayed in reaching agreement on counsel fees and while both parties failed to request the Court's assistance in deciding the amount of counsel fees.

As stated in Moore's Federal Practice, par. 60.06(1) at 4055 (2d ed 1966):

> "In the interest of justice, and to the end that the record reflect the actual intention of the Court and parties, relief from such minor errors, should be freely granted."

In addition, Rule 60 (b) provides for relief from mistake or inadvertence and Rule 61 provides for relief where a defect in an order adversely affects the substantial rights of a party. There can hardly be any argument that the loss of over $15,000.00 is the loss of a substantial right to the plaintiff.

There is authority for allowing interest from the date of a first or superseded judgment. See Perkins v Standard Oil Company, 487 F.2d 672, 676 (9 Cir. 1973) where the Court held:

> "We alternately hold that interest should run from the date of entry of the original judgment because that is the date on which the correct judgment should have been entered."

There is also authority for allowing interest from the date of an interlocutory judgment. See CHITTY v. M/V VALLEY VOYAGER, 408 F.2d 1354, 1358 (5 Cir. 1969).

The fact is that awarding interest, as here, rests in the sound discretion of the Court and as noted in CHITTY, supra, the exercise of that discretion is not readily upset on appeal.

In BARRIOS v. LOUISIANA CONSTRUCTION MATERIALS COMPANY, 465 F2d 1157, 1168 (5 Cir. 1972), the Court held that a six week delay in deciding cross-claims before judgment was entered was not such an unreasonable dely as to require relief. However, here the delay was one year and the delay was occasioned by counsel and not by the Court.

The various reported cases dealing with the issue of whether interest runs from the date of plaintiff's recovery or from the date of entering of judgment on all third-party claims, all involve actions where the Court had to decide third-party or cross-claims and consequently all the primary issues in the lawsuit had not been decided when the judgment was entered. Such was not the case here, the Court could have decided the issue of attorney's fees or counsel could have, in the exercise of diligence, reached agreement within one mont , and consequently most of the reported cases do not involve the same situation as the facts herein. If deponent had not pressed counsel to reach

agreement and enter judgment, very likely nothing would have been accomplished to date. By their inaction or failure to reach agreement, the shipowner and stevedore should not be enriched to plaintiff's detriment.

In an action where an original judgment was entered and post-trial motions were made, the issue was presented to the Court as to whether such motions would postpone running of interest. The Court answered in the negative in LITIWINOWICZ v. WEYERHAUSER STEAMSHIP COMPANY, 185 F. Supp. 692 (E.D. Pa. 1962).

Deponent submits that LITWINOWICZ is analagous to the problem herein, in that a delay occasioned by the disagreement of counsel for the defendant and third-party defendant should not toll the running of interest any more so than post-trial motions Since the record on appeal has not yet been filed, then this Court retains jurisdiction of this type of motion.

Your deponent wishes to call to this Court's attention that it was understood by all parties, the defendant-third-party plaintiff's attorney, attorney for third-party defendant and the attorney for the plaintiff that the judgment entered on December 10, 1973 was a final judgment and that execution could be issued upon said judgment.

This is borne out by the fact that Mr. Stanziale requested a 30-day stay of execution to protect his right to appeal. The Court informed Mr. Stanziale that it thought there was an automatic 10-day stay but that it would grant the 30-day

stay. In the same discussion your deponent asked for interest to run from the date of the entry of judgment and there were no objections from either Mr. Stanziale or Mr. O'Brien. It is evident that all parties were of the opinion that the judgment was a final one, that all questions of fact and law had been determined and that all that remained was an agreement between the defendant-third-party plaintiff's attorney and the third-party defendant's attorney to arrive at a reasonable figure for fees and expenses.

The failure to so arrive was due solely and wholly upon the failure of the discussions between the attorney for the defendant-third-party plaintiff and the attorney for the insurance company, represented by Mr. Stanziale, attorney for the third-party defendant.

It is grossly unfair and inequitable that the plaintiff should be made to suffer a substantial loss because of the dalliance of the defendant-third-party plaintiff and the third-party defendant when at all times all parties and the Court considered the judgment of December 7, 1973 to be a final and enforceable judgment.

Your deponent asks that this Court exercise its benign discretion in this matter and amend the judgment filed on or about January 4, 1974 so as to include interest from December 10, 1973.

Attached and made part hereof is a copy of the amended judgment, the original of which will be submitted under separate back to the Court.

Also attached hereto is the original judgment dated December 7, 1973 and filed December 10, 1973 and made a part hereof. That this is a complete judgment completely settling points of law as between the plaintiff and the defendant and as between the defendant-third-party plaintiff and the third-party defendant granting the defendant-third-party plaintiff costs and reasonable counsel fees. All that is missing is the amount.

WHEREFORE, it is respectfully requested that plaintiff's motion be granted in its entirety.

IRVING B. BUSHLOW
Irving B. Bushlow
Attorney for Plaintiff

Subscribed and sworn to
before me this 21st day
of February, 1975

ABRAHAM NELSON

PLAINTIFF'S PROPOSED AMENDED JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | |
|---|---|
| WILLIAM GARAFOLA,<br>Plaintiff,<br>-against-<br>F.A. DETJEN,<br>"SAAR",<br>Defendant and Third-Party Plaintiff,<br>-against-<br>PITTSTON STEVEDORING CORP.,<br>Third-Party Defendant. | 71 C 658<br>AMENDED JUDGMENT |

This action having come on for trial before Honorable Walter J. Bruchhausen and a jury and the jury having rendered a verdict in favor of the plaintiff and against the Defendant and Third-Party Plaintiff for the sum of $235,000, and for the recovery for full indemnity by the Defendant and Third-Party Plaintiff against the Third-Party Defendant.

AND, a purported "judgment" dated December 7, 1973, having been entered on December 10, 1973 without any direction by the Court for the entry of the same pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, notwithstanding that this action has not yet been finally determined by the fixing of the amount of the "costs and reasonable counsel fees" referred to

in the said judgment,

AND the United States Court of Appeals, for the Second Circuit having by order dated March 12, 1974 dismissed the appeal of the Third-Party Defendant from the said purported judgment for lack of jurisdiction, on the ground that it is not of Civil Procedure, not a final judgment within the meaning of 28 U.S.C. Sec. 1291, and the protective cross appeal therefrom being hereby withdrawn for the same reason,

AND the amount of attorneys' fees and disbursements of the Defendant and Third-Party Plaintiff recovered by it against the Third-Party Defendant having been stipulated in the sum of $5,615.63,

NOW upon the said jury verdict and the annexed stipulation fixing the amount of attorneys' fees and disbursements, it is,

ORDERED AND ADJUDGED, as follows:

1. The final judgment dated December 7, 1973 and entered on December 10, 1973 be and the same is hereby superseded and,
2. The plaintiff, William Garaiola, shall recover of and from Defendant and Third-Party Plaintiff, F. A. Detjen, "SAAR" the sum of $235,000 together with costs heretofore taxed in the

sum of $244.36, amounting in all to the sum of $235,244.36 with interest from December 10, 1973.

3. Defendant and Third-party Plaintiff, F.A. Detjen, "SAAR" shall recover of and from the Third-Party Defendant, Pittston Stevedoring Corporation the said sum of $235,244.36, together with the sum of $5,615.63, attorneys' fees and disbursements as stipulated, amounting to the total sum of $240,859.99, with taxable costs.

4. The supersedeas bond of Liberty Mutual Insurance Company dated January 15, 1974 herefofore filed by Pittston shall remain in full force and effect and shall be applicable to this final judgment and shall secure both the plaintiff's recovery of the Defendant and Third-Party Plaintiff against the Third-Party Defendant up to the amount therein stated, in the event of any timely appeal from this final judgment by the Third-Party Defendant and any cross-appeal by the Defendant and Third-Party Plaintiff.

Dated: Brooklyn, New York
March , 1975

U.S.D.C.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

WILLIAM GARAFOLA,
Plaintiff,

-against-

F. A. DETJEN, "SAAR",
Defendant and
Third-Party Plaintiff,

-against-

PITTSTON STEVEDORING CORP.,
Third-Party Defendant.

71 C 658

REPLY AFFIRMATION

----------X

Irving B. Bushlow an attorney-at-law, duly admitted to practice law in the State of New York, with offices located at 26 Court Street, Brooklyn, New York, and under the penalties of perjury, affirms as follows:

This affirmation is being submitted in reply to the affidavits of Henry J. O'Brien and Joseph A. Cohen. The court's attention should be called first to the fact that the stevedore has still not produced an affidavit for Mr. Stanziale who was their trial attorney and who participated in the agreement on interest which has been fully set forth as part of the matters in your affiant's motion papers. As further evidence of the fact that all parties considered the judgment entered December 7, 1973 as a final judgment is evidenced by the Notice of Appeal a copy of which is attached hereto and made part of, originally filed by A. Paul Goldblum, at that time the appeal attorney for the stevedore. In the Notice of Appeal the stevedore was appealing from each and every part of the judgment and not just from plaintiff's recovery and it is apparent that

be heard a year earlier. It is only because the plaintiff [illegible]
fact they had, and that it was a valid judgment.

It would be redundant for affiant to repeat the conversations had at the close of the trial, which are a matter of record, showing that there was a meeting of the minds and a stipulation in open court as to the interest bearing nature of the judgment filed on December 7, 1973 and that plaintiff never requested a judgment pursuant to Rul3 54(b) because he was of the opinion and it was your affiant's contention, that the attorney for the defendant and the attorney for the third-party defendant were of the same opinion as no denial was made by them in respect to interest whenever your affiant spoke to them and told them that interest was running on this judgment and that the longer it took them to settle counsel fees the more interest would accumulate.

That, contrary to Mr. Cohen's argument, the delay of over one year in entering a final judgment was occasioned solely and wholly by reason of the dalliance and dilatory tactics on the part of Mr. Cohen's client and Mr. Cohen himself in failing to arrive at a figure with Mr. O'Brien as to counsel fees and costs. Even after such agreement had been arrived at by Mr. O'Brien with the insurance company, Liberty Mutual Insurance Company, Mr. Cohen still refused and procrastinated in signing a stipulation that the agreement had been reached, even though a copy of said stipulation had been sent to him by Mr. O'Brien the fact being that Mr. Cohen never signed such a stipulation. It was only at the insistence of affiant, Irving B. Bushlow, attorney for the plaintiff that a conference was called before Your Honor at which time judgment was entered, December 10, 1974. Your affiant fully believes that had he not pressed the issue no judgment would be entered as of this date.

By no stretch of the imagination on all of the facts in this case can Mr. Cohen's contentions be upheld for had he acted promptly in signing the stipulation, I believe the appeal would have been long past decided.

Although covered in the original motion papers I must call to the court's attention that in the Caputo case not all triable issues had been determined as the indemnity case against the stevedore had been left to the court's decision and it was only after three or four months that said decision came down and that a final judgment could be entered. In the instant case all triable issues were disposed of by the jury's verdict, to wit: 1) that the defendant was liable to the plaintiff in the sum of $235,000; 2) that the defendant have judgment over against the third-party defendant for the said amount and the only remaining issue was not as to whether the defendant was entitled to counsel fees and expenses but only as to the amount of said counsel fees and expenses. The dilatory tactics of defendant and thrid-party defendant have already been set forth in this regard.

WHEREFORE, the plaintiff respectfully prays this court that in the exercise of its benign discretion grant this motion.

Dated: Brooklyn, New York
June 11, 1975

Irving B. Bushlow
Attorney for Plaintiff

NOTICE OF PREVIOUSLY DISMISSED APPEAL.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

WILLIAM GARAFOLA,

Plaintiff,

-against-

F. A. DETJEN,

Defendant and
Third Party Plaintiff,

CIVIL ACTION FILE NO.
71 C 658

NOTICE OF APPEAL

-against-

PITTSTON STEVEDORING CORP.,

Third Party
Defendant.

----------X

Notice is hereby given that third party defendant PITTSTON STEVEDORING CORP. hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 7th day of December, 1973, and appeals from each and every part thereof.

Dated: Forest Hills, N. Y.
January 3, 1974

Yours, etc.,

A. PAUL GOLDBLUM
Attorney for Third Party Deft.
PITTSTON STEVEDORING CORP.
Office & P. O. Address
97-45 Queens Boulevard
Forest Hills, N.Y. 11374
BRowning 5-6026

TO: IRVING B. BUSHLOW, ESQ.
Attorney for Plaintiff
Office & P. O. Address
26 Court Street
Brooklyn, New York 11242

TO: KIRLIN, CAMPBELL & KEATING, ESQS.
Attorneys for Defendant and Third Party Plaintiff
Office & P. O. Address
120 Broadway
New York, New York 10005

and in turn granted indemnity over against the stevedore.

PLAINTIFF'S MOTION TO AMEND JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

WILLIAM CARAFOLA,

Plaintiff,

-against- 71 Civil 658

F. A. DETJEN, SAAR", Bruchhausen, J.

Defendant & Third Party Plaintiff,

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND FINAL JUDGMENT TO ALLOW PRE-JUDGMENT INTEREST

-against-

PITTSTON STEVEDORING CORP.,

Third Party Defendant.

----------X

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

HENRY J. O'BRIEN, being duly sworn, deposes and says:

I am an attorney at law, and a member of the firm of Kirlin, Campbell & Keating, attorneys for Defendant and Third Party Plaintiff Cross-Appellant F. A. Detjen, (SAAR), and am fully familiar with all the pleadings and proceedings heretofore had in this action.

This affidavit is submitted in opposition to plaintiff-appellee's motion stated to be made under Rules 60 and 61, Federal Rules of Civil Procedure, for an order amending the final judgment of December 13, 1974 entered in this matterto provide for pre-judgment interest from December 7,1973, the date of the entry of a premature clerk's non-final,non-appealable judgment. No judgment could have been entered in favor of the plaintiff at that time because no application was made nor did the court



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direct, in accordance with the requirements of Rule 54(b), Federal Rules of Civil Procedure, that such a judgment be entered upon the court's express determination therefore.

On January 3, 1974, the attorneys for the third party defendant-appellant filed a notice of appeal from the purported clerk's judgment of December 7, 1973 and on February 25, 1974, your deponent filed a notice of motion to dismiss the appeal from this non-final disposition for lack of jurisdiction with the United States Court of Appeals for the Second Circuit. The Court of Appeals, on or about March 20, 1974, granted that motion.

On December 13, 1974, after agreement had been reached on attorneys' fees, thus concluding all the claims asserted in this action, a final judgment was entered in this court. That judgment contained the following provision:

> "1. The purported final judgment dated December 7, 1973 and entered on December 10, 1973 be and is hereby superseded and vacated."

A notice of appeal dated January 9, 1975 from that final judgment was thereafter filed on behalf of third party defendant-appellant and on January 23, 1975 a notice of protective cross-appeal was filed by the defendant shipowner.

Thereafter, the appeal was docketed and perfected by the filing of a pre-argument statement pursuant to Paragraph 3 of the Civil Appeals Management Plan. A scheduling order was issued by the Court of Appeals and conferences were held before the Staff Counsel for the Second Circuit on January 30, 1975 and February 14, 1975.

Plaintiff's motion requesting this court to, in effect, grant him one year's pre-judgment interest on a maritime personal injury jury verdict, based on the assertion of a non-existing "agreement" is misconceived and wholly without merit.

tacitly admits that, under the law, he cannot get pre-judgment interest on a maritime personal injury jury claim, when he resorts to labeling it "post verdict interest" and attempts to fabricate an "agreement" out of some general and unspecific colloquy which took place in regard to attorneys' fees after the jury returned the verdict. Pre-judgment interest and post verdict interest in a maritime personal injury case which has been tried to a jury are one and the same thing and the affixing of labels does not change its nature.

The argument in plaintiff's moving papers that an "agreement" existed among the parties that interest was to run prior to the entry of a proper final judgment is specious on its face. There never was any "agreement", or meeting of the minds, or consent to interest. The general discussion referred to by plaintiff's attorney at the close of the trial related to the possibility of adjusting counsel fees between the shipowner defendant as part of its indemnity award against the third party defendant stevedore and referred to an unspecified period of time in which to accomplish that. Nowhere during the course of that colloquy was there any mention of an "agreement", "consent" or "stipulation" concerning interest.

The fact that there may be a unilateral misapprehension that an agreement has been reached does not create that necessary meeting of the minds, by all parties, which is essential to the formation of a valid agreement.

Plaintiff's attorney was clearly laboring under a misunderstanding of the law when he thought that interest could run prior to the entry of judgment in a maritime personal injury jury claim. When it was demonstrated to him that, under the law, interest could not run prior to judgment, the concept of an "agreement" was first raised.

This is borne out by the fact that no reference to any "agreement" was ever raised by plaintiff's attorney until after February 14, 1975 when, during the course of a pre-appeal conference before Staff Counsel for the Court of Appeals, plaintiff's attorney was reminded that there had been no final judgment on which interest could run until such judgment was entered on December 13, 1974. Thereafter, and for the first time, plaintiff's attorney attempted to conjure the concept of an "agreement" from the general colloquy between counsel and the court after the verdict.

More significant, however, is the fact that when the final judgment was entered on December 13, 1974, plaintiff's attorney made no mention of any agreement regarding pre-judgment interest or, as he now labels it, post verdict interest, nor did he make any attempt to have that judgment recite that interest was to run from a date prior to December 14, 1975. Clearly, if plaintiff's attorney believed that an agreement on interest existed, the time to have asserted it was when the final judgment was presented. The fact that no such assertion was made indicates that the concept of an "agreement" is of recent origin and is not valid.

The law is specific concerning interest on a jury verdict. 28 U.S.C. 1961 states that interest on a jury verdict may run only from the date of entry of a final judgment. Interest does not run from the time of the verdict.

Interest does not run merely because one or more counsel may think it runs. A misapprehension or misunderstanding of the law by counsel or the failure to invoke the remedy provided under Rule 54(b) of the Federal Rules of Civil Procedure cannot alter the effect of the law.

If the attorney for the plaintiff had wanted interest to run immediately he should have known that it could not run until a final judgment had been entered in his favor and that no such judgment could be entered until the entire action, including the amount of the defendant's indemnity, was finally determined, unless he promptly sought and obtained from the court a direction pursuant to Rule 54(b) of the Federal Rules of Civil Procedure for the immediate entry of a judgment in his favor based upon the express determination required by that rule. He most certainly was dramatically charged with such knowledge, over one year ago in February, 1974, when Detjen filed a motion to dismiss Pittston's attempted appeal from the premature purported "judgment" entered by the clerk without a Rule 54(b) direction, (the motion to dismiss the appeal was granted by the Court of Appeals on March 20, 1974.) Indeed, the purported "judgment" of December, 1973 was expressly vacated on December 13, 1974 when the final judgment was entered.

In a situation similar to the one now before this court, Caputo v United States Lines Company, 311 F.2d 413 (2d Cir., 1963), the jury returned a verdict for plaintiff on November 6, 1961 but a decision on the third party claim was reserved to the trial court. The clerk, however, entered a judgment on the same date. Approximately 5 months later, a final judgment was entered, vacating as premature the earlier judgment. Plaintiff argued that the final judgment subsequently entered should bear interest from the date of entry of the premature judgment by the clerk.

The Court of Appeals for this Circuit noted that no application had been made under Rule 54(b), Federal Rules of Civil Procedure, for the entry of partial judgment and that

therefore, there was no reason why the court should award interest for a period prior to the date of the final judgment. In making that determination, the court said:

> "The judgment of November 6, 1961 was prematurely entered in the light of Rule 54(b) F.R.Civ.P., which provides: 'When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the court may direct the entry of a final judgment upon one or more but less than all of the claims only upon an express direction for the entry of judgment.' There was no reason why this court should award interest from November 6, 1961 as though the judgment of March 30, 1962 had been entered as of the date of the premature judgment." (416,417)

The cases cited in plaintiff's supporting affidavit do not support his contention, and most of them are non-personal injury jury verdict cases, such as claims for property damage, wages under the Fair Labor Standard's Act and violations of the anti-trust laws. The personal injury jury verdict cases that he cites hold exactly the opposite of what he urges. In Litiwinowicz v Weyerhauser Steamship Company, 185 F.Supp. 692 (EDPA, 1962), the court held (in accord with 28 U.S.C. §1961) that the period for interest ran from the date of the entry of the judgment and that post-trial motions do not suspend the statutory interest thereon. Consequently, that case is in accord with the holding in Caputo that the actual entry of the final judgment is what fixes the time for the running of interest on a jury verdict for personal injuries. Inasmuch as the delay in the time for the commencement of the interest period and the entry of a final judgment and the disposition of any appeal therefrom in regular course must be

charged to the plaintiff's failure to promptly request the court to enter a judgment in his favor pursuant to Rule 54(b), it is surprising that he cites Barrios v Louisiana Construction Materials Company, 465 F.2d 1157, (5th Cir., 1972) as discussed below.

Clearly, the plaintiff is in no position to move for relief under Rule 60(b) on the asserted ground of "mistake" and "inadvertence". He never requested the District Court to enter judgment in accordance with the provisions of Rule 54(b) and may not, after the appeal from the actual final judgment had been perfected, request pre-judgment interest merely because he failed to make a prompt application to have judgment directed on less than all of the claims.

Plaintiff's right to invoke the remedy provided by Rule 54(b) was totally independent of, and in no way contingent on, the settling of attorneys' fees and there is simply no basis for plaintiff to assert that any delay in arriving at an agreement on attorneys' fees between the defendant shipowner and the third party defendant stevedore prevented or prejudiced him in making a timely application under Rule 54(b).

Obviously, there is no authority under Rule 60 for an application to allow pre-judgment interest on a jury verdict based upon a judicially fashioned claim. The fact that the plaintiff's unliquidated personal injury claim for negligence and unseaworthiness is a federal maritime claim tried before and decided by a jury with all the attributes of a jury verdict and is a judicially created remedy analogous to and the equivalent of the Jones Act remedy for unseaworthiness allowed to crew member seamen, upon which no pre-judgment interest in a jury verdict is allowed.

In Barrios v Louisiana Construction Materials Company, 465 F.2d 1157, (5th Cir., 1972) (supra), an oil rig seaman sued his employer under the Jones Act and the operator of the rig under the general maritime law. The plaintiff sought to obtain interest on the jury award from the time of the verdict to the date of the entry of final judgment. The Court held that it would have been error for the District Court to award pre-judgment interest.

In reaching its conclusion, the court reasoned at page 1168:

> "Unlike collision cases and wrongful death cases where the loss, although unliquidated, occurs at one time and is measurable as of that time, this is a case in which the damages awarded by the jury involved substantial compensation for future loss of earnings. Thus, even had the case been tried on the admiralty side of the court, it is highly unlikely that pre-judgment interest would have been awarded. See, e.g., Martin v Jones, D.C., 296 F.Supp. 875 (1968)"

Plaintiff's maritime remedies for negligence and unseaworthiness were fashioned by the United States Supreme Court in decisions placing a longshoreman in the same status as a seaman because he did seamen's work. See, e. g., Seas Shipping Co. v Sieracki, 328 U.S. 85 (1946); Pope & Talbot, Inc. v Hawn et al, 346 U.S. 406 (1953). In this context, his trial by jury remedy is the same as that of a seaman suing under the Jones Act and pre-judgment interest on a jury verdict may not be awarded him.

As Judge Lumbard observed in Moore McCormack Lines, Inc. v Richardson, 295 F.2d 583, (2d Cir., 1961) at pages 592 and 594 with respect to Jones Act and F.E.L.A. claims:

> "Second, it is contended that we should follow decisions in this circuit in actions at law under Jones Act and F.E.L.A. provisions (also in expressly providing for moratory interest) which we have recognized that, at least at law, interest is not allowed for the period between occurrence of the tort and entry of judgment....
>
> In any event, no one would be so naive as to suppose that juries do not throw into the scales the years that a plaintiff may have had to wait before his case can be heard by a jury. The practical reason why the courts in jury cases have refused to grant moratory interest may therefore be found in the judicial recognition that a jury usually makes some allowance for loss caused by delay."

There never was any "agreement" at the close of trial concerning interest and plaintiff's atterney's unilateral assertion that an "agreement" existed is misconceived and was apparently raised only as an afterthought when he finally realized that interest cannot run absent a valid judgment.

Prior to December 13, 1974, there was no final judgment in this case and plaintiff has made no showing of any mistake or inadvertence. Had plaintiff sought an entry of partial judgment to preserve whatever rights he may have had, there was ample time within which to move this court for such relief pursuant to Rule 54(b), Federal Rules of Civil Procedure.

WHEREFORE, defendant and third party plaintiff cross-appellant respectively requests that plaintiff's motion be dismissed.

HENRY J. O'BRIEN

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Henry J. O'Brien

Sworn to before me this

3 day of June, 1975

NICHOLAS J. MARCANTONIO
Notary Public, State of New York
No. 31-4517276
Qualified in New York County
Commission Expires March 30, 1976

AFFIDAVIT OF JOSEPH ARTHUR COHEN IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND JUDGMENT.

JAC:ML

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

WILLIAM GARAFOLA,

Plaintiff,

-against-

F. A. DETJEN, "SAAR",

Defendant and Third Party Plaintiff,

-against-

PITTSTON STEVEDORING CORP.,

Third Party Defendant.

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71 Civil 658

Bruchhausen, J.

AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND FINAL JUDGMENT TO ALLOW PRE-JUDGMENT INTEREST.

STATE OF NEW YORK )
COUNTY OF NEW YORK ) SS:

JOSEPH ARTHUR COHEN, being duly sworn, deposes and says:

That he is a member of the firm of ALEXANDER, ASH, SCHWARTZ & COHEN, attorneys for third party defendant, PITTSTON STEVEDORING CORP., and that he is fully familiar with all the pleadings and proceedings heretofore had herein. He submits this affidavit in opposition to plaintiff's motion for an order amending the final judgment herein of December 13, 1974 so as to obtain an additional year's interest thereon.

An opposing affidavit has already been filed in this matter by Henry J. O'Brien in behalf of F. A. Detjen "Saar". The reasons set forth in Mr. O'Brien's affidavit in opposition are reasons which should commend themselves to this Court, and your deponent joins in and endorses the position taken by Mr. O'Brien. No point would be served in repeating what Mr. O'Brien has stated so well, and your deponent therefore sets forth in this affidavit only one further reason for denying the instant application.

As this Court knows, your deponent's client is the appellant in this case; and is appealing solely from the recovery obtained by the plaintiff. PITTSTON first sought to take that appeal by Notice of Appeal dated January 3, 1974 from the so-called "judgment" initially entered herein on December 7, 1973. However, as that "judgment" did not fully conclude and adjudicate the rights and liabilities of all the parties herein in that the counsel fee issue was unresolved, PITTSTON's initial appeal was dismissed by order of the Circuit Court entered on March 12, 1974 pursuant to motion that had been made by the defendant, F. A. Detjen.

Had the plaintiff's attorney promptly moved for the entry of judgment in favor of the plaintiff and against the defendant, Detjen, pursuant to Rule 54(b), that initial appeal taken by PITTSTON would have brought all appealable issues on to

be heard a year earlier. It is only because the plaintiff's attorney failed to have judgment entered in behalf of his client pursuant to Rule 54(b) that the appeal we are hereby taking from plaintiff's recovery has yet to be delayed for a year. There was absolutely no reason whatsoever why plaintiff's attorney could not have moved for the entry of judgment pursuant to Rule 54(b) immediately following receipt of the jury verdict herein.

Having procrastinated and delayed in having judgment entered for more than one year plaintiff's attorney now wants to be rewarded for his own failures by the granting of interest to cover the time that he was procrastinating.

As Mr. O'Brien's opposing affidavit so ably points out, interest is due only from the entry of judgment, and under the law the interest here sought by plaintiff's attorney is not allowed. And, under the equities of the situation, such interest should also not be allowed since the complete delay in bringing this matter on for appellate disposition has been due to the fault of plaintiff's attorney in promptly moving for entry of judgment in his client's favor under Rule 54(b). Had that been done, then the initial appeal taken by PITTSTON as against the plaintiff's recovery would not have been dismissed for lack of jurisdiction and this entire matter would have long

since been concluded.

An additional year's interest on the judgment amount here involved comes to a substantial sum of money. There is no reason whatsoever, under either law, fact or equity, why plaintiff's recovery should be so rewarded for his own failure.

The issue of counsel fees is a mere smoke screen. That issue related solely to the shipowner and the stevedore and did not affect the plaintiff whatsoever. Plaintiff's attorney could have, as almost every other plaintiff's attorney does, moved for the entry of judgment under Rule 54(b) insofar as his client was concerned regardless of whether the counsel fee issue had been resolved.

Plaintiff's attorney failed to utilize the procedure afforded by Rule 54(b) and has instead delayed and procrastinated in having judgment entered. Neither he nor his client should be rewarded with interest for the year's delay caused by their own failure.

WHEREFORE, it is respectfully submitted that the instant motion should in all respects be denied.

Sworn to before me this
9th day of June, 1975.

Notary Public

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WILLIAM GARAFOLA,

Plaintiff,

-against-

F. A. DETJEN, "SAAR",

Defendant and Third Party Plaintiff,

-against-

PITTSTON STEVEDORING CORP.,

Third Party Defendant.

No. 71 C 658

June 16, 1975

MEMORANDUM and ORDER

BRUCHHAUSEN, D. J.

The plaintiff moves for an order amending the judgment dated December 13, 1974, directing that the plaintiff be entitled to interest from December 10, 1973.

This action was commenced by a longshoreman against a shipowner who thereafter impleaded the stevedore. The trial before a jury commenced December 4, 1973 and concluded December 7, 1973 wherein the jury rendered a

verdict in favor of the plaintiff against the shipowner, and in turn granted indemnity over against the stevedore. Judgment was entered immediately by the clerk of the court. The sole issue remaining was the amount of counsel fees due the shipowner by the stevedore to be agreed upon between their counsel.

A notice of appeal was filed on January 4, 1974. Thereafter, the shipowner moved to dismiss the appeal because it was premature in that counsel fees were not made part of the judgment. The Court of Appeals granted said motion on March 20, 1974.

Subsequently on December 13, 1974, agreement had been reached concerning counsel fees. Thereafter a subsequent judgment entered which included the counsel fees.

A notice of appeal dated January 9, 1975 from that final judgment of December 13, 1974 was filed, and on January 23, 1975, a notice of protective cross-appeal was filed by the shipowner.

The contention of the defendants is that the clerk's form of judgment dated December 10, 1973 was not final, because counsel fees had not been determined between the shipowner and the stevedore, and therefore

said judgment was premature.

The defendants rely heavily upon Caputo v. U. S. Lines, 311 F.2d 413. In that case it appears that there was a general verdict in favor of the plaintiff, but before the determination by the court of the third-party claim, a clerk's form of judgment was filed and ultimately held by the court as being filed prematurely because all claims were not finally adjudicated. In the case at bar, all claims including those of the third parties were determined by the jury, and the remaining issue to be decided was the counsel fees due the shipowner by the stevedore. The delay of approximately one year in arriving at the amount of counsel fees was not attributable to the plaintiff, nor was he involved in such determination. This issue was to be decided between the shipowner and the stevedore.

There is no reason to penalize the plaintiff for this delay of approximately one year. The Court upon full deliberation of all the facts surrounding this issue, concludes that the plaintiff is entitled to interest from December 7, 1973, the date of the entry

of the clerk's form of judgment.

It is so ordered.

Copies hereof will be forwarded to the attorneys for the parties.

Unita Buckhalter
Senior U. S. D. J.

NOTICE OF APPEAL BY DEFENDANT AND THIRD PARTY PLAINTIFF.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - -X

WILLIAM GARAFOLA,

Plaintiff

-against-

F. A. DETJEN,
"SAAR",

Defendant and
Third Party Plaintiff

-against-

PITTSTON STEVEDORING CORP.,

Third Party Defendant

NOTICE OF APPEAL BY DEFENDANT AND THIRD PARTY PLAINTIFF FROM ORDER GRANTING THE PLAINTIFF'S MOTION TO AMEND JUDGMENT OF DECEMBER 14, 1974 BY ALLOWING PRE-JUDGMENT INTEREST THEREON FROM DECEMBER 7, 1973 (TO BE CONSOLIDATED WITH APPEALS 75-7053-7084 BY ORDER DATED MAY 6, 1975)

No. 71 CIVIL 658

- - - - - - - - - - - - - - - - - - - - -X

NOTICE is hereby given that the defendant and third party plaintiff hereby appeals to the United States Court of Appeals for the Second Circuit from the order dated and entered June 16, 1975 which [on remand by order dated May 6, 1975 for the purposes of moving to amend the judgment, heretofore appealed from, while the appeals therefrom are pending under numbers 75-7053-7084 and providing that any further appeals on such motion be consolidated therewith] granted the motion of the plaintiff to amend the judgment entered on December 14, 1974 by directing that the plaintiff is entitled to interest on said judgment from December 7, 1973, the date of the entry of the document referred to therein as "the Clerk's form of judgment", notwithstanding the fact that said document did not constitute a judgment because of the absence of any direction for a judgment in accordance with Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: New York, New York
June 25, 1975.

KIRLIN, CAMPBELL & KEATING

By HENRY J. O'BRIEN
A Member of the Firm
Attorneys for Defendant and
Third Party Plaintiff
No. 120 Broadway
New York, New York 10005

TO:

70261

IRVING B. BUSHLOW, ESQ.
Attorney for Plaintiff
No. 26 Court Street
Brooklyn, New York 11242

ALEXANDER, ASH, SCHWARTZ & COHEN, ESQS.
Attorneys for Third Party Defnedant
No. 801 Second Avenue
New York, New York 10017

NOTICE OF APPEAL BY THIRD PARTY DEFENDANT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

WILLIAM GARAFOLA,
Plaintiff,

-against-

F. A. DETJEN, "SAAR",
Defendant and
Third Party Plaintiff,

-against-

PITTSTON STEVEDORING CORP.,
Third Party Defendant.

71 Civil 658

NOTICE OF APPEAL

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S I R S :

PLEASE TAKE NOTICE, that the third party defendant hereby appeals to the United States Court of Appeals for the Second Circuit from the order dated and entered June 16, 1975 which (on remand by order dated May 6, 1975 for the purposes of moving to amend the judgment, heretofore appealed from, while the appeals therefrom are pending under No.'s 75-7053-7084 and providing that any further appeals on such motion be consolidated therewith) granted the motion of the plaintiff to amend the judgment entered on December 14, 1974 by directing that the plaintiff is entitled to interest on said judgment from December 7, 1973, the date of the entry of the document referred to therein as "clerk's form of judgment", notwithstanding the fact that said document did

not constitute a judgment because of the absence of a direction for a judgment pursuant to FRCP 54(b).

Dated: New York, N. Y.
July 2, 1975

A Member of the Firm
of

ALEXANDER, ASH, SCHWARTZ & COHEN
Attorneys for Third Party Defendant
Office and P. O. Address
801 2nd Avenue
New York, New York 10017
(212) 889-0410

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

WILLIAM GARAFOLA,

Plaintiff-Appellee,

-against-

F. A. DETJEN, "SAAR",

Defendant & Third Party
Plaintiff-Appellee-
Cross-Appellant,

-against-

PITTSTON STEVEDORING CORP.,

Third Party
Defendant-Appellant.

----------X

Docket No.'s 75-7053
75-7084

CERTIFICATE
OF
SERVICE

WE HEREBY CERTIFY that a copy of the within supplemental appendix was this date mailed to the following:

IRVING BUSHLOW, ESQ.
Attorney for Plaintiff-Appellee
26 Court Street
Brooklyn, New York 11242

ALEXANDER, ASH, SCHWARTZ & COHEN
Attorneys for Third Party
Defendant-Appellant
801 Second Avenue
New York, New York 10017

Dated: New York, New York

August 8, 1975

KIRLIN, CAMPBELL & KEATING

By Henry J. O'Brien

Henry J. O'Brien

Attorneys for Defendant &
Third Party Plaintiff-
Appellee-Cross-Appellant
120 Broadway
New York, New York 10005

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